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ROBINSON, MCFADDEN & MOORE, P.C.
COLUMBIA, SOUTH CAROLINA

2010-325-C

September 20, 2010

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

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bshealy@robinsonlaw.com

**Re: Birch Communications, Inc., Birch Telecom of the South, Inc. and
American Fiber Network, Inc. application for approval to transfer
assets**

Dear Jocelyn:

Enclosed for filing please find the verified Joint Application of Birch Communications, Inc.; Birch Telecom of the South, Inc., doing business as Birch Communications (collectively "Birch"); and American Fiber Network, Inc. for approval to transfer American Fiber Network, Inc.'s assets and South Carolina customer base to Birch. The verified testimony of Christopher Bunce on behalf of Birch Communications, Inc. and Birch Telecom of the South, Inc. in support of the Joint Application is also enclosed for filing. By copy of this letter we are providing the same to the South Carolina Office of Regulatory Staff. Should you have any questions, please contact me.

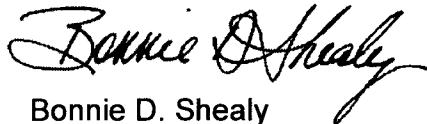
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SEP 20 2010

PSC SC
CLERK'S OFFICE

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.


Bonnie D. Shealy

/bds
Enclosures

cc/enc: Dan F. Arnett, ORS Chief of Staff (via email & U.S. Mail)
Angela F. Collins, Esquire (via email)

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**Before the
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In re:

**Joint Application of Birch Communications,
Inc.; Birch Telecom of the South, Inc., dba
Birch Communications; and American
Fiber Network, Inc. for Approval to
Transfer Assets**

JOINT APPLICATION

Birch Communications, Inc. (“Birch Communications” or Purchaser); Birch Telecom of the South, Inc., dba Birch Communications (“Birch Telecom”) (collectively the “Company”); and American Fiber Network, Inc. (“AFN” or “Seller”) (Birch Communications, Birch Telecom and AFN collectively, the “Joint Applicants”) jointly request authority to transfer Seller’s telecommunications assets and South Carolina customer base to the Company. This request is made pursuant to SC Code Ann. §§ 58-9-280, 58-9-300 and 58-9-310. For the reasons set forth below, the Joint Applicants respectfully request that the Public Service Commission of South Carolina (“Commission”) approve this Application by November 15, 2010, so that they can expeditiously close the transaction and meet critical business objectives. In support of their Joint Application, the Joint Applicants respectfully show as follows:

I. DESCRIPTION OF THE JOINT APPLICANTS

A. American Fiber Network, Inc.

AFN is a Delaware corporation with headquarters located at 9401 Indian Creek Parkway, Suite 280, Overland Park, Kansas 66210. AFN is authorized by the Commission to provide local exchange and interexchange services.¹

B. Birch Communications, Inc.

Birch Communications is a Delaware corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch Communications, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801 issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.'s, doing business as Birch Communications, request to change the name to "Birch Communications, Inc."

C. Birch Telecom of the South, Inc. dba Birch Communications

Birch Telecom is a Delaware corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch Telecom is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina.² Birch Telecom is a wholly owned subsidiary of Birch Communications.

¹ Docket No. 2001-21-C, Order No. 2001-367 (April 24, 2001).

² Birch was granted authority to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services by Order No. 2000-792 issued September 25, 2000 in Docket No. 2000-0265-C.

II. DESIGNATED CONTACTS

Correspondence, orders, or other material concerning this Joint Application should be directed to:

For American Fiber Network, Inc.:	For Birch
Douglas C. Bethell American Fiber Network, Inc. 9401 Indian Creek Parkway, Suite 280 Overland Park, KS 66210 913-338-2658 (telephone) 913-338-5285 (facsimile) doug.bethel@afnltld.com	Bonnie D. Shealy Robinson, McFadden & Moore, P.C. 1901 Main Street, Suite 1200 Post Office Box 944 Columbia, SC 29202 803-779-8900 (telephone) bshealy@robinsonlaw.com Angela F. Collins Cahill Gordon & Reindel LLP 1990 K Street, NW, Suite 950 Washington, DC 20006 202-862-8930 (telephone) 202-862-8958 (facsimile) acollins@cgrdc.com

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

On September 3, 2010, Birch Communications, Inc. agreed to purchase AFN's assets and customer base pursuant to a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code ("Agreement"). The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. Birch Telecom will provide the telecommunications services to AFN's South Carolina customers. The ownership structure of the Company will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Birch Telecom will provide AFN customers with the same service quality they have come to expect and all billing will be handled under the Birch name. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

Following approval of the proposed Transaction, Birch Telecom will file any necessary tariff revisions to incorporate the Seller's current services and rates so that the affected customers will continue to receive the same services that they currently receive without any changes to the service offerings, rates, or terms and conditions. Birch Telecom will provide services to AFN customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements. All current AFN customers will be transferred to Birch Telecom unless the customer selects another carrier. The proposed transfer date is December 1, 2010. Applicants will provide a joint notice of the transfer to AFN customers at least thirty (30) days prior to the transfer in accordance with the customer notice rules adopted by the Commission and the Federal Communications Commission. A sample of the customer notification is included with the Joint Application in **Exhibit A**.

Upon completion of the Transaction and the migration of customers, Seller will no longer offer telecommunications services in South Carolina. After Seller determines that it no longer needs its authorization for operational or billing purposes, Seller will surrender its authorization and cancel its tariffs in a separate filing.

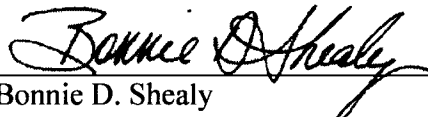
IV. PUBLIC INTEREST ANALYSIS

Approval of the Transaction is in the public interest. As discussed above, current AFN customers will be given prior written notice of the transfer of their account to Birch Telecom, in compliance with South Carolina and federal customer notice rules. Following consummation of the Transaction, Birch Telecom will continue to offer high quality services to South Carolina residents, as is supported by their industry knowledge, technical expertise, and financial strength. As a result, the proposed Transaction will be transparent to customers and will not have a negative impact on the public interest, services to South Carolina customers, or competition.

WHEREFORE, for the reasons stated above, the Joint Applicants respectfully request that the Commission grant all authority necessary for AFN to transfer its telecommunications assets and South Carolina customers to Birch.

Respectfully submitted,

**BIRCH COMMUNICATIONS, INC. AND
BIRCH TELECOM OF THE SOUTH, INC.**



Bonnie D. Shealy
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Columbia, SC 29202
803-779-8900 (telephone)
bshealy@robinsonlaw.com

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
acollins@cgrdc.com

Dated: September 20, 2010

Counsel for Birch Communications, Inc. and
Birch Telecom of the South, Inc.

EXHIBIT A



IMPORTANT NOTICE **REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES**

Dear _____

Birch Communications ("Birch") and American Fiber Network, Inc. ("AFN") are pleased to announce that Birch will acquire AFN's local and long distance telephone customers. Subject to approval by the Federal Communications Commission and state regulators, Birch will replace AFN as your current telecommunications service provider on or after **[30 DAYS]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by AFN. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and successful business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than the possibility of a minor change to your voice mail service for which you will receive additional information.¹ There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by AFN during the transition of service.

You do have the right to select a different carrier for the telecommunications service(s) at issue. If you choose to switch to an alternate carrier for services, you may incur a fee for the transfer of services to that alternate carrier. In addition, should you have a term commitment with AFN and you disconnect services or transfer to another carrier prior to the end of that term, you will be liable for any early termination charges.

¹ It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.

EXHIBIT A

If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed.

Please note that if you are a customer of AFN on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact AFN at **800-864-0583**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.

About Birch Communications - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 38-state southeast, southwest, midwest and northeast regions serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small and medium business customers.

AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and
Birch Communications

STATE OF **GEORGIA**

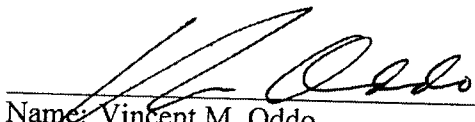
COUNTY OF **BIBB**

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VERIFICATION

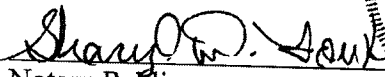
I, Vincent M. Oddo, President/CEO of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

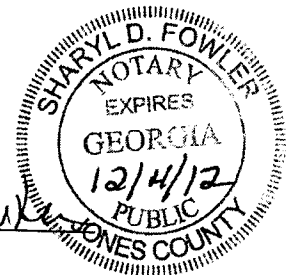
9/7/10
Date


Name: Vincent M. Oddo

Title: President/CEO,
Birch Communications, Inc.

Subscribed and sworn to before me this 7th day of Sept. 2010


Notary Public



STATE OF Kansas)
)
COUNTY OF Johnson)

VERIFICATION

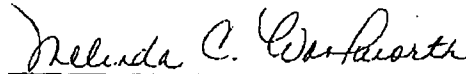
I, Douglas C. Bethell, being first duly sworn, do hereby certify, depose and state that I am President for American Fiber Network, Inc. ("AFN"), that I am authorized to make this verification on behalf of AFN, and that the contents with respect to AFN are true and correct to the best of my knowledge, information and belief.



Name: Douglas C. Bethell

Title: President
American Fiber Network, Inc.

Subscribed and sworn to before me this 9 day of SEPTEMBER 2010


Notary Public

**Before the
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In re:

**Joint Application of Birch Communications,
Inc.; Birch Telecom of the South, Inc., dba
Birch Communications; and American
Fiber Network, Inc. for Approval to
Transfer Assets**

**DIRECT TESTIMONY OF
CHRISTOPHER BUNCE**

on behalf of

Birch Communications, Inc. and Birch Telecom of the South, Inc.

1 **Q. Please state your name, title, and address.**

2 **A.** My name is Christopher Bunce. I am the Vice President, Legal and General Counsel for
3 Birch Communications, Inc. ("BCI") and its subsidiary Birch Telecom of the South, Inc.
4 doing business as Birch Communications ("Birch"). My business address is 2300 Main
5 Street, Suite 600, Kansas City, Missouri 64108.

6 **Q. Who are the Applicants?**

7 **A.** BCI, Birch and American Fiber Network, Inc. ("AFN" or "Seller") (BCI, Birch and AFN
8 collectively, "Joint Applicants").

9 **Q. Briefly describe the Joint Applicants.**

10 **A.** BCI and Birch are Delaware corporations with principal offices located at 3060 Peachtree
11 Road NW, Suite 1065, Atlanta, Georgia 30305. Birch is a wholly owned subsidiary of
12 BCI. The Commission granted BCI, formerly Access Integrated Networks, Inc. authority
13 to provide local and interexchange distance telecommunications services on November
14 15, 1999, in Order No. 1999-801. The Commission granted Birch authority to provide
15 resold and facilities-based local exchange and intrastate interexchange
16 telecommunications services by Order No. 2000-792 issued September 25, 2000, in
17 Docket No. 2000-0265-C. Birch is qualified to do business in South Carolina as a
18 foreign corporation.

19 AFN is a Delaware corporation with headquarters located at 9401 Indian Creek Parkway,
20 Suite 280, Overland Park, Kansas 66210. AFN was authorized by the Commission to
21 provide local exchange and interexchange services in Docket No. 2001-21-C, Order No.
22 2001-36 issued on April 24, 2001.

23

1 **Q. Whom do you represent?**

2 **A. I represent BCI and Birch.**

3 **Q. Are you familiar with the Joint Application submitted to this Commission?**

4 **A. Yes, I am.**

5 **Q. What authority is requested by the Joint Application?**

6 **A. The Joint Applicants seek approval from the Commission to transfer the**
7 telecommunications assets and South Carolina customers of AFN to Birch. Joint
8 Applicants also request, to the extent required, that the Commission waive any applicable
9 anti-slamming regulations. Because of the timing of the transaction and the proposed
10 target date for the transfer of customers, the Joint Applicants further request that the
11 Commission grant the relief requested herein on an expedited basis.

12 **Q. Please describe the proposed asset transfer transaction.**

13 **A. On September 3, 2010, BCI agreed to purchase AFN's assets and customer base pursuant**
14 to a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code
15 ("Agreement"). The assets to be purchased include customer accounts, accounts
16 receivable, customer agreements and contracts, vendor agreements and contracts, and
17 intellectual property.

18 **Q. What impact will this transaction have on AFN's South Carolina customers and will**
19 **the proposed transaction serve the public interest?**

20 **A. This transaction is being made in a seamless fashion that will cause virtually no changes**
21 in customers' terms, conditions, and rates for service. The transfer will be nearly
22 transparent to customers other than a change in the name of their service provider. The
23 proposed transaction will also ensure that the affected customers enjoy continuity of

1 high-quality telecommunications service. Grant of the Joint Application is consistent
2 with the public interest in South Carolina.

3 **Q. Will the customers to be transferred be notified of this transaction?**

4 A. Yes. Written notice of the proposed asset transfer will be provided to AFN customers via
5 First Class United States mail as required pursuant to Section 64.1120(e) of the Federal
6 Communications Commission's rules. A sample of the customer notification is included
7 with the Joint Application in Exhibit A. The Joint Applicants include all relevant state
8 and federal customer notification requirements in the notification letter. To the extent
9 necessary, the Joint Applicants also request that the Commission grant a waiver of any
10 applicable anti-slamming regulations.

11 **Q. Why have the Joint Applicants requested expedited treatment of the Application?**

12 A. Joint Applicants request that the Commission process the Joint Application on an
13 expedited basis. Expedited treatment is warranted so that AFN's customers may be
14 transferred to Birch with a minimum of disruption and confusion. In order to manage the
15 transfer on a corporate-wide basis and to ensure that customer service is not impacted
16 during this transition, it is important that the transfer of South Carolina customers take
17 place on as uniform a schedule as possible. Expedited approval will help the Joint
18 Applicants to proceed in an orderly and seamless fashion.

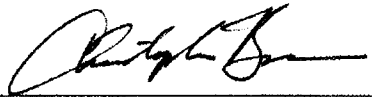
19 **Q. Does this conclude your testimony?**

20 A. Yes.

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

VERIFICATION

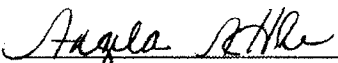
I, Christopher J. Bunce, declare that I am the Vice President, Legal and General Counsel for Birch Communications, Inc. ("BCI") and its subsidiary Birch Telecom of the South, Inc. ("Birch"). I verify that, based upon information and belief, I have knowledge of the statements in the foregoing Direct Testimony, and I declare that they are true and correct to the best of my knowledge, information and belief.



CHRISTOPHER J. BUNCE

Subscribed and sworn to before me this 14th day of September 2010

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires June 9, 2014
Commission # 10887286



Notary Public